

# EXHIBIT A

Recommendation

Intel Kabushiki Kaisha  
5-6 Toukoudai Tsukuba City, Ibaragi Prefecture  
President Kazumasa Yoshida

The Japan Fair Trade Commission issues a recommendation to the above as follows, upon conducting the provision of Section 48 (1) of the Antimonopoly Act.

Text

1 Intel Kabushiki Kaisha ('IJKK'), when importing the x86 series central processing units which are manufactured and sold by Intel Corporation ('Intel') to be incorporated into personal computers ('CPU(s)'), and selling such CPUs to the Japanese manufacturers of personal computers ('PC(s)') of which head offices are located in Japan ('Japanese OEM(s)'), shall terminate such conducts which have been engaged by IJKK since May 2002 as;

with respect to the CPUs incorporated into PCs manufactured and sold by the Japanese OEMs, by making commitments to provide the Japanese OEMs with the rebates and/or funds on condition that,

(1) the Japanese OEMs make the ratio of the CPUs manufactured and sold by Intel ('Intel's CPUs') in the volume of CPUs to be incorporated into the PCs which are manufactured by the OEMs ('MSS') at 100%, and refrain from adopting the CPUs manufactured and sold by Intel's competitors ('competitors' CPUs'); or

(2) the Japanese OEMs make MSS at 90% and put the ratio of competitors' CPUs in the volume of CPUs to be incorporated into the PCs which are manufactured and sold by the Japanese OEMs down to 10%,

making the Japanese OEMs refrain from adopting competitors' CPUs to be incorporated into all or most of the PCs which are manufactured and sold by them.

2 IJKK shall notify the following matters to all the Japanese OEMs with which IJKK deals, and shall also make them known to its employees thoroughly. The method of such act shall be approved by the Commission in advance:

(1) Measures taken by IJKK based on the preceding article

(2) IJKK, when providing the Japanese OEMs with such rebates and/or funds, has no intention to set condition which leads to excluding competitors' CPUs out of the PCs which are manufactured and sold by the Japanese OEMs; and

(3) IJKK has already terminated the conduct to make a Japanese OEM not adopt competitors' CPUs to be incorporated into the PCs in more than one groups of PCs referred to as 'series', each of which has comparatively large amount of production volume to others, thereby making all the PCs in those series at that OEM incorporate Intel's CPUs, by making commitments to provide the Japanese OEM with the rebates and/or funds on condition that it change to Intel's CPUs competitors' CPUs previously incorporated into the PCs in those series, and that it keep using Intel's CPUs in all the PCs in those series.

3 IJKK, from now on, when dealing with the Japanese OEMs, shall not exclude the business activities of the competitors for the sales of CPUs by employing the following conducts:

(1) The conduct to restrict the ratio in volume of competitors' CPUs to be incorporated into the PCs manufactured and sold by a Japanese OEM at 10 percent or less, by making a commitment to provide the Japanese OEM with the rebates and/or funds on condition that it make MSS at 90 % or more and maintain MSS at such level;

(2) The conduct to, without justification, make a Japanese OEM not adopt competitors' CPUs to be incorporated into PCs in more than one groups of PCs referred to as 'series', each of which has comparatively large amount of production volume to others, thereby making all the PCs in those series at that OEM incorporate Intel's CPUs, by making a commitment to provide the Japanese OEMs with the rebates and/or funds on condition that it change to Intel's CPUs competitors' CPUs previously incorporated into the PCs in those series, and that it keep using Intel's CPUs in all the PCs in those series.

4 IJKK shall take measures to operate (i) Antimonopoly training for officers of sales department and their staffs engaged in promoting and selling CPUs, and (ii) periodical audits by legal section, thereby ensuring the conduct mentioned above in 3 shall not be caused hereafter.

5 IJKK shall promptly report the measures taken based on 1,2 and 4 to the JFTC.

#### Part 1. Facts

1. (1) (a) IJKK is a Japanese corporation with the head office at the address set out above. IJKK is a wholly owned subsidiary of Intel International, which is in turn a wholly owned subsidiary of Intel located in Santa Clara, CA, USA ('Intel USA'). IJKK has engaged in the business in Japan of sales of Intel's CPUs.

(b) Nihon AMD Kabushiki Kaisha ('AMD Japan') is a Japanese corporation with the head

office at Shinjuku NS Building, 5<sup>th</sup> floor, 4-1, 2-chome, Nishi-shinjuku, Shinjuku-ku, Tokyo, which is a wholly owned subsidiary of Advanced Micro Devices Inc. located in Sunnyvale, CA, USA ('AMD USA'). AMD Japan has engaged in the business in Japan of sales of CPUs manufactured and sold by AMD USA ('AMD's CPU(s)').

(c) Transmeta Corporation ('Transmeta USA'), with the head office in Santa Clara, CA, USA, has engaged in the business of manufacturing and sales of CPUs, and owns all of the shares in Transmeta Kabushiki Kaisha ('Transmeta Japan') with the head office at 3-3, 2-chome, Nishi-shinjuku, Shinjuku-ku, Tokyo. Transmeta Japan has engaged in the marketing activities in Japan for the CPUs manufactured and sold by Transmeta USA ('Transmeta's CPUs'), and intermediating the orders of Transmeta's CPUs from the Japanese OEMs to Transmeta USA.

(2) (a) The three companies, i.e., IJKK, AMD Japan and Transmeta USA, have sold CPUs, directly or through dealers, to the Japanese OEMs in Japan.

(b) The total volume of CPUs sold, either directly or through dealers, to the Japanese OEMs by the three companies, i.e., IJKK, AMD Japan and Transmeta USA, in Japan ('Total Domestic CPU Sales Volume') amounts to almost all of the CPUs sold in Japan, and the sales volume of Intel's CPUs sold by IJKK in 2003, was approximately 89% of the Total Domestic CPU Sales Volume.

(3) (a) In general, PCs are divided into two categories by models, i.e., notebook PCs and desktop PCs. Some Japanese OEMs have certain groups of PCs referred to as 'series' according to the product functions, purpose of use, etc., for both models, and some Japanese OEMs sell various PCs such as PCs from high end to low end, in terms of price and functions, as the same series PCs.

(b) In general, the Japanese OEMs launch new model PCs three to four times per year, equipping them with new CPUs improved in function relative to those CPUs used, including additional incorporated features, and/or making modifications such as addition of new functions. IJKK, AMD Japan and Transmeta Japan conduct marketing activities targeting such business opportunities.

(c) IJKK has set MSS as an important indicator/measure of sales/marketing, and IJKK makes it the principal target for sales/marketing activities to increase MSS set for each of the Japanese OEMs.

(4) Since around 1991, IJKK has promoted the business activities of the Japanese OEMs to sell the PCs, into which Intel's CPUs are incorporated, through the support system for the advertisement and commercial activities of the Japanese OEMs, called as 'Intel Inside Program,' and has thereby established and/or strengthened the value of Intel's CPUs' brands.

(5) (a) When IJKK directly sells Intel's CPUs to the Japanese OEMs, it sells its products at the 'Customer Authorized Price' ('CAP') or at a discounted price ('ECAP(s) etc. '), for which certain amount was deducted from CAP ('Special Price') with regard to Intel's specific CPUs.

(b) When IJKK sells Intel's specific CPU to the Japanese OEMs at a Special Price, it invoices them based on the CAP price and, in general, upon the expiration of certain period of time, IJKK provides certain amounts of money back to them (i.e., the difference between CAP and the Special Price multiplied by the sales volume ('rebate,' *warimodoshi-kin*)).

(c) In addition, IJKK sometimes provides 'Market Development Funds' ('MDF') through Intel USA to the Japanese OEMs in order to achieve, for instance, promoting the sales of PCs into which Intel's CPUs are incorporated.

(6) (a) Intel's CPUs account for the vast majority of Total Domestic CPU Sales Volume, and Intel's CPUs are widely recognized and have strong brand power. Moreover, IJKK has provided a stable supply of Intel's CPUs which can be found in almost all PCs, from low end to high end PCs, in terms of price and function, etc., to the Japanese OEMs. IJKK has launched in Japan various CPUs which were improved in their functions compared with the then current CPUs one after another. It is important for the Japanese OEMs to have a product lineup which includes PCs incorporating Intel's CPUs.

(b) Moreover, since around 2000 in Japan, competition among the Japanese OEMs has become keen in the given industry due to the decrease of PC demand and the entry into the market of PCs with low prices which are manufactured outside Japan. For the Japanese OEMs, therefore, it was important to procure Intel's CPUs with the terms and conditions as favorable as possible, and accordingly the Japanese OEMs strongly desire to obtain rebates or MDF.

(c) Under this environment, IJKK has decided the amount of rebates or MDF and any terms and conditions related to the granting of such money.

2. (1) In and after around 2000, the ratio of AMD's CPUs in the Total Domestic CPU Sales Volume in the Japanese market had increased from approximately 17% to 22% during the years between 2000 and 2002, because the Japanese OEMs started using AMD's CPUs for, in particular, mid and low end PCs in terms of a price and function, etc., taking an opportunity that AMD Japan started selling AMD's CPUs, which are competing with Intel's CPUs, at lower prices. IJKK therefore was concerned that the sales volume of AMD's CPUs would continuously increase thereafter, and since around May 2002 to date, IJKK has refrained the Japanese OEMs from adopting competitors' CPUs for all or most of the PCs manufactured and sold by them or all of the PCs that belong to specific series, by making commitments to provide the five OEMs, which are of the Japanese OEMs IJKK has sold Intel's CPUs directly (the total sales volume of IJKK, AMD Japan and Transmeta USA to the five OEMs was approximately 77% of the Total Domestic CPU Sales Volume during the period between 2000 through 2003), with rebates and/or MDF in order to maximize their MSS on condition that, respectively, with regard to the CPUs to be incorporated into their PCs,

- (a) the Japanese OEMs make MSS at 100% and refrain from adopting competitors' CPUs.
- (b) the Japanese OEMs make MSS at 90%, and put the ratio of competitors' CPUs in the volume of CPUs to be incorporated into the PCs manufactured and sold by them down to 10%; or
- (c) the Japanese OEMs refrain from adopting competitors' CPUs to be incorporated into PCs in more than one series with comparatively large amount of production volume to others.

(2) The illustration of the conducts above is as follows:

a. IJKK has made commitments to the Japanese OEMs to provide them with the rebates on Intel's specific CPUs, on condition that the Japanese OEMs, by changing to Intel's CPUs the competitors' CPUs previously incorporated into the PCs in specific series, or by suspending competitors' CPUs to be newly adopted, make MSS at 100% and maintain MSS at such level. Based on the condition, the Japanese OEMs have increased MSS to approximately 100% and maintained MSS at such level.

b. IJKK has made commitments to a Japanese OEM to provide it with the rebates and/or MDF on Intel's specific CPUs, on condition that the Japanese OEM make MSS to 90% etc.. Based on the condition, the Japanese OEM thereby has increased MSS to approximately 90% and maintained MSS at such level, putting the ratio of competitors' CPUs down to approximately 10% of the total purchase volume of the Japanese OEM, by amending its production plans etc.

c. IJKK made commitments to a Japanese OEM to provide it with the rebates for Intel's specific CPUs on condition that the Japanese OEM, by changing to Intel's CPUs the competitors' CPUs previously incorporated into the PCs in the two series with comparatively large amount of production volume to others, make all the PCs in those series incorporate Intel's CPUs and maintain such situation, respectively. Based on the condition, the Japanese OEM continued to make all the PCs in those series incorporate Intel's CPUs.

3. Based on the above findings of facts, the ratio of the sales volume by AMD Japan and Transmeta USA among Total Domestic CPU Sales Volume decreased from approximately 24% in 2002 to approximately 11% in 2003,

#### Part 2 Application of the Antimonopoly Act

Based on the facts described in Part 1, IJKK, contrary to the public interest, has substantially restrained the competition in the market of CPUs sold to the Japanese OEMs, by acting to exclude Intel's competitors' business activities related to the sales of CPUs to the five OEMs. Such conduct by IJKK falls under the category stipulated in the Section 2-5 of the Antimonopoly Act, violating the Section 3 of the Act.